

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

ALUMINUM RECOVERY TECHNOLOGIES, INC.,
an Indiana corporation,

Plaintiff,

Case No.:

Hon.:

vs

ACE AMERICAN INSURANCE COMPANY,
a Pennsylvania domiciled property and
casualty insurance company,

Defendant.

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**COMPLAINT FOR DECLARATORY JUDGMENT,
MONETARY DAMAGES AND JURY DEMAND**

NOW COMES Plaintiff ALUMINUM RECOVERY TECHNOLOGIES, INC., by and through its attorneys, WILSON YOUNG PLC, and for its Complaint for Declaratory Judgment and Monetary Damages against Defendant ACE AMERICAN INSURANCE COMPANY, states as follows:

THE PARTIES

1. Plaintiff Aluminum Recovery Technologies, Inc. ("ART") is an Indiana corporation with its principal place of business in the City of Kendallville, County of Noble, State of Indiana.

2. Defendant ACE American Insurance Company ("ACE") is a Pennsylvania domiciled insurance company authorized to issue property and casualty insurance policies in the State of Indiana.

JURISDICTION AND VENUE

3. This action is brought pursuant to 28 U.S.C. §§ 2201-2202 and seeks a declaratory judgment as to the rights and duties of the parties under the ACE Commercial Property insurance policy, No. EPRN0 915 8765, for the policy period March 1, 2015 to March 1, 2016 (the "Policy") for property losses suffered by ART occurring on or about February 2, 2016. This Policy is in the possession of ACE.

4. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction because the matter in controversy exceeds \$75,000 and is between citizens of different states.

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391.

6. As a result of a dispute regarding the applicability and/or existence of insurance coverage for the property loss claims made by ART and denied by ACE, there is an actual case or controversy between the parties.

GENERAL ALLEGATIONS

7. On February 2, 2016, ART experienced property damage and business income loss due to a sudden and accidental failure of a portion of the wall of furnace #4 and the resultant breakout of molten aluminum.

8. On the date of this loss, furnace #4 had just been brought back into service after having been relined with new refractory material.

9. ACE has paid a portion of ART's property loss claim related to this loss but has unreasonably failed, and otherwise refused, to pay ART's claims related to the relining of furnace #4 caused by ACE's engineers causing the removal of the majority of the refractory material in ACE's investigation of furnace #4 which necessitated replacement of the entire refractory surface of furnace #4 and the removal of the prior refractory material.

10. ACE has paid a portion of ART's property damage, business income and extra expense claim related to this loss but has unreasonably failed, and otherwise refused, to pay ART's full property damage, business income and extra expense claim.

COUNT I – DECLARATORY JUDGMENT

11. ART restates and realleges the allegations set forth in paragraphs 1-10 as if set forth fully herein.

12. All of the property damage, business income and extra expense losses suffered by ART are within the property insurance coverages of its ACE Policy.

13. ART seeks a determination of the rights and duties of itself and ACE and a declaration that insurance coverage and/or indemnity exists under the ACE Policy for the property damage, business income and extra expense suffered by ART as result of the February 2, 2016, occurrence and/or the acts or omissions of ACE or its agents.

WHEREFORE, Plaintiff Aluminum Recovery Technologies, Inc., respectfully requests this Honorable Court declare the rights, obligations and duties of it and Defendant ACE American Insurance Company under the Policy.

COUNT II – BREACH OF CONTRACT

14. ART restates and realleges the allegations set forth in paragraphs 1-13 as if set forth fully herein.

15. The property damage, business income and extra expense suffered by ART as result of the February 2, 2016, occurrence is within the insurance coverage of the ACE Policy.

16. ACE has wrongfully asserted inappropriate and/or inapplicable policy defenses to deny insurance coverage to ART for its property damage, business income and extra expense claims.

17. The actions of ACE in denying property insurance coverage to ART for its February 2, 2016, property damage, business income and extra expense property loss and subsequent damage claim constitutes a material breach of the Policy.

18. ART has suffered property damage, business income and extra expense, all of which constitute damages as a direct result of ACE's breach of the Policy.

WHEREFORE, Plaintiff Aluminum Recovery Technologies, Inc., respectfully requests this Honorable Court enter a Judgment in its favor against Defendant ACE American Insurance Company in an amount in excess of \$75,000, plus pre-judgment, post-judgment interest, costs, attorneys' fees and any additional relief which this Court finds to be appropriate, equitable or just.

COUNT III – NEGLIGENCE

19. ART restates and realleges the allegations set forth in paragraphs 1-18 as if set forth fully herein.

20. ACE, its agents and engineers had a duty to properly and competently inspect furnace #2 after the loss so as to not cause any additional damage.

21. ACE, its agents and engineers breached their duty to properly and competently inspect furnace #4.

22. ART has suffered property damage, business income and extra expense, all of which constitute damages as a direct result of ACE's, and its agents and engineers, negligent adjustment and/or inspection of furnace #4.

WHEREFORE, Plaintiff Aluminum Recovery Technologies, Inc., respectfully requests this Honorable Court enter a Judgment in its favor against Defendant ACE American Insurance Company in an amount in excess of \$75,000, plus pre-judgment, post-judgment interest, costs, attorneys' fees and any additional relief which this Court finds to be appropriate, equitable or just.

COUNT IV – BAD FAITH

23. ART restates and realleges the allegations set forth in paragraphs 1-22 as if set forth fully herein.

24. ACE's actions in causing the removal of the refractory material from furnace #4 and then disclaiming coverage for the property damage to refractory material and its disposal constitutes an act in bad faith.

25. As a result of the aforementioned actions of ACE in bad faith, ART has suffered additional damages which include consequential damages and attorney's fees and costs.

WHEREFORE, Plaintiff Aluminum Recovery Technologies, Inc., respectfully requests this Honorable Court enter a Judgment in its favor against Defendant ACE American Insurance Company in an amount in excess of \$75,000, plus pre-judgment, post-judgment interest, costs, attorneys' fees and any additional relief which this Court finds to be appropriate, equitable or just.

JURY DEMAND

Plaintiff Aluminum Recovery Technologies, Inc., respectfully requests a jury trial for all issues of fact raised by it or any other party in this action.

Respectfully submitted,

WILSON YOUNG PLC

/s/ Douglas Young

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Dated: September 6, 2017